

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE I. WRIGHT,	§	
	§	No. 387, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0007020610
Appellee.	§	

Submitted: February 11, 2011

Decided: April 27, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 27th day of April 2011, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, Bruce I. Wright, filed an appeal from the Superior Court's June 1, 2010 order denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). We conclude that there is no merit to the appeal and affirm the judgment of the Superior Court.

(2) In November 2000, Wright was indicted on charges of Murder in the First Degree, Conspiracy in the First Degree and two weapon offenses in connection with the shooting of Jacobo Crucey. In 2002, a Superior Court jury found Wright guilty of Murder in the Second Degree (a lesser-included offense of

Murder in the First Degree) and the weapon offenses. The State entered a *nolle prosequi* on the conspiracy charge. The Superior Court sentenced Wright to a total of forty-five years at Level V suspended after thirty-two years for decreasing levels of supervision. On direct appeal, the Superior Court judgment was affirmed.¹

(3) The following excerpt from our *per curiam* Opinion on direct appeal provides background pertinent to this appeal.

The State decided to call the three witnesses at trial despite their apprehension about the witnesses recanting their statements. The witnesses were Shemuel Clay, James Singletary and Cornell Garvin. By the time of their testimony, Clay, Singletary and Garvin had become turncoat witnesses, so the State sought admission of their prior statements under 11 Del. C. § 3507. After questioning the witnesses and the police, the [Superior Court] found the statements were voluntary and admitted them into evidence.²

(4) Wright filed his first motion for postconviction relief in September 2004. In one of three claims of ineffective assistance of counsel, Wright claimed that his counsel was ineffective for failing to appeal the admission of the turncoat witnesses' out-of-court statements on the basis that the statements were involuntary. When denying that claim in its December 29, 2004 order denying Wright's postconviction motion, the Superior Court provided as follows:

¹ *Wright v. State*, 818 A.2d 950 (Del. 2003).

² *Id.* at 952. On direct appeal, Wright unsuccessfully challenged the Superior Court's admission of Singletary's out-of-court statement that was based, in part, on inadmissible hearsay.

The question of whether the witnesses' out-of-court statements were voluntarily given was the subject of extensive hearings during the trial which led the [Superior Court] to issue a lengthy written opinion summarizing its factual findings. The [Superior Court] reviewed the testimony offered during *voir dire* in connection with each of the witness' statements received under 11 *Del. C.* § 3507 and provided its reasons for determining that the State had demonstrated the voluntariness of the statements by a preponderance of the evidence given the "totality of the circumstances."³

On appeal from the denial of Wright's first postconviction motion, this Court affirmed.⁴

(5) On June 29, 2009, Wright filed his second motion for postconviction relief. In his motion, as amended and supplemented, Wright claimed that he was denied the right to present a "third party guilt" defense, that the Superior Court committed a miscarriage of justice by admitting the out-of-court statements of the turncoat witnesses, and that his trial counsel was ineffective when he failed to present a "shoot-out" defense and instead chose to present a clearly weaker alibi defense.

(6) In March 2010, after consideration of Wright's motion as amended and supplemented, the State's response, defense counsel's affidavit and Wright's response, a Superior Court Commissioner recommended that Wright's motion be

³ *State v. Wright*, Del. Super., Cr. ID No. 0007020610, Slights, J. (Dec. 29, 2004) (internal footnotes omitted).

⁴ *Wright v. State*, 2005 WL 2319113 (Del. Supr.).

denied as procedurally barred. In objections to the Commissioner's report, Wright complained that the Commissioner did not rule on the merit of his claims. Thereafter, on June 1, 2010, after *de novo* review, the Superior Court denied Wright's motion for postconviction relief. This appeal followed.

(7) When reviewing the Superior Court's denial of postconviction relief, this Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.⁵ Rule 61(i)(1) bars an untimely postconviction motion. Rule 61(i)(2) bars a repetitive postconviction motion, and Rule 61(i)(3) bars litigation of any postconviction claim that could have been raised in the prior proceedings but was not. Rule 61(i)(4) and (i)(5) provide for exceptions to the application of the procedural bars.

(8) In his opening brief on appeal, Wright distills all of his postconviction claims into a single claim that his counsel was ineffective when he failed to properly investigate the facts of the shooting so as to formulate an effective defense. In his reply brief, Wright raises a new claim, *i.e.*, that under this Court's July 2010 Opinion in *Blake v. State*, the case should be remanded for further proceedings.⁶

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁶ *Blake v. State*, 3 A.3d 1077 (Del. 2010).

(9) We have reviewed Wright’s claim under *Blake* for plain error and have found none.⁷ In *Blake*, we reversed and remanded on the basis that the witnesses’ prior out-of-court statements were admitted without the State having laid a proper foundation as to whether or not the statements were truthful. The same cannot be said of Wright’s case wherein each witness testified that his prior out-of-court statement was untrue.

(10) Wright’s claim that his trial counsel failed to properly investigate the case is barred under Rule 61(i)(1), (2) and (3) without exception. Wright has not demonstrated a colorable claim of a miscarriage of justice caused by a constitutional violation under Rule 61(i)(5) or any basis upon which to reconsider any formerly adjudicated claim under Rule 61(i)(4).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁷ “Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.” *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986). See Del. Supr. Ct. R. 8 (providing that “[o]nly questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented”).